

Application No. 09/309,844
Attorney Docket No. 96-753.1

This amendment results in the addition of four (4) dependent claims for which claim fees were not previously paid. Upon entry, please charge the required claim fee to deposit account 03-1129. A fee transmittal sheet is attached.

Respectfully submitted,



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REMARKS

Applicant respectfully requests reconsideration of this application and reiterates the arguments set forth in the response dated May 16, 2002.

With regard to claims 23 through 28, the examiner has stated that "simply claiming relative heights of the front of the hood relative to the top surface of the radiator is considered a matter of design choice because the front hood can be made at a variety of heights without altering the function of the cooling arrangement and therefore is not considered critical to the invention and has been given little patentable weight". The examiner has not provided any good basis for his conclusion regarding "matter of design choice", and as will be explained below, the selection of the radiator height relative to the height of the upper surface of an engine enclosure is not a matter of design choice.

A declaration by William Pack, the inventor in this application, is submitted herewith in support of the following remarks. This declaration was not submitted previously because the examiner provided only conclusory statements regard his "matter of design choice" rejection in the Office Action dated January 31, 2002, and finally gave only limited basis for this rejection in the Final Office Action dated January 6, 2003. Thus, this submission is considered timely. A clean, unsigned copy of the declaration is provided for the convenience of the examiner since the signed copy is a second-generation fax transmittal.

Selection of the height of a radiator cooling core is critical to its function because cooling capacity is dependent upon cooling core size and cooling core size is dependent upon cooling core height. Thus, the examiner's statement in the Final Office Action that "the radiator could easily be lowered or raised without altering its function" is not correct. Increasingly stringent requirements for engine emissions have generally led to higher engine heat rejection requirements and increased cooling capacity requirement for work machine engines. Thus, designers have been driven to increase the size of radiator cooling cores, as by increasing the height of the core. At the same time, operators of work machines have increasingly demanded less obstruction of visibility from the operator cab of the machine, for example by

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any engine enclosure positioned forward of the operator cab. Accordingly, designers must make a trade-off between meeting increased cooling capacity requirements and conflicting operator visibility demands if a conventional arrangement is used in which the radiator is positioned in an engine enclosure forward of the operator cab. In work machines in which the radiator is positioned forward of the operator cab in an engine enclosure having an upper surface, increasing the height of the radiator to increase cooling capacity would increase the height of the engine enclosure upper surface, thus altering its function by undesirably decreasing visibility from the operator cab. Similarly, lowering the height of the upper surface of the engine enclosure to improve operator visibility would require lowering the height of the radiator, thus altering the function of the radiator by undesirably reducing its cooling capacity (unless other dimensions or features of the radiator are changed). Clearly, the relative positioning of the top edge of the radiator cooling core and the upper surface of the engine enclosure is not merely a matter of design choice. Claims 23 through 28 (and newly added claim 32) recite an innovative arrangement in which a radiator is positioned rearward of the operator cab with an engine enclosure forward of the cab in which the forward end of the upper surface of the engine enclosure is lower relative to the machine frame than the upper edge of the radiator cooling core. This arrangement is not taught or suggested by the art cited by the examiner.

In view of the foregoing remarks and the accompanying declaration, the examiner's conclusions regarding the referenced "matter of design choice" in connection with claims 23 through 28 should be withdrawn. Thus, claims 23 through 28 (and newly added claim 32) are in condition for allowance.

Respectfully submitted,



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